

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: PROPOSED AMENDED RULE 31,
RULES OF THE TENNESSEE SUPREME COURT**

M2006-01303-SC-RL2-RL - Filed: June 22, 2006

ORDER

The Alternative Dispute Resolution Commission has submitted to the Court a proposed amended Rule 31 of the Rules of the Supreme Court. The proposed amended rule is attached hereto as Exhibit A.

In the interest of providing prompt and fair consideration of the proposed amended Rule 31 submitted by the Commission, the Court hereby solicits written comments on the proposed amended rule from the bench, the bar, and the public. The deadline for submitting written comments is Monday, August 21, 2006. Written comments should be addressed to:

Michael W. Catalano, Clerk
Re: Proposed Amended Rule 31
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order to the media and to the Alternative Dispute Resolution Commission. In addition, this order and the proposed amended Rule 31 shall be posted on the Tennessee Supreme Court's website.

It is so ORDERED.

PER CURIAM

EXHIBIT A

Proposed Amended Rule 31, Rules of the Supreme Court

Rule 31. Alternative Dispute Resolution.

GENERAL PROVISIONS

Section 1. Application

The standards and procedures adopted under this rule apply only to Rule 31 ADR Proceedings and only to Dispute Resolution Neutrals serving pursuant to this rule. They do not affect or address the general practice of alternative dispute resolution in the private sector outside the ambit of Rule 31. Pursuant to the provisions of this Rule, a court may order the parties to an eligible civil action to participate in certain alternative dispute resolution proceedings.

Section 2. Definitions

- (a) AAlternative Dispute Resolution Commission® or AADRC® is the Supreme Court Alternative Dispute Commission established pursuant to this Rule.
- (b) "Baccalaureate degree" and "graduate degree" are only those degrees awarded by an institution of higher education accredited by an agency recognized by the Council for Higher Education Accreditation (CHEA) and approved or listed by the United States Department of Education as a recognized accrediting agency.
- (c) ACase Evaluation®, as set forth in sections 16 and 22 herein, is a process in which a neutral person or three-person panel, called an evaluator or evaluation panel, after receiving brief presentations by the parties summarizing their positions, identifies the central issues in dispute as well as areas of agreement, provides the parties with an

assessment of the relative strengths and weaknesses of their case, and may offer an evaluation of the case.

(d) ACourt® includes the Tennessee Supreme Court, the Tennessee Court of Appeals, Circuit, Chancery, Law & Equity and Probate Courts, General Sessions Courts, Juvenile Courts and Municipal Courts.

(e) AEligible Civil Action® includes all civil actions except forfeitures of seized property, civil commitments, adoption proceedings, habeas corpus and extraordinary writs, or juvenile delinquency cases. The term Aextraordinary writs® does not encompass claims or applications for injunctive relief.

(f) AJudicial Settlement Conference® is a mediation conducted by a judicial officer as set forth in section 20 herein.

g) “Mediator” is a neutral person that conducts discussions among disputing parties to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.

(h) AMediation® is an informal process in which a neutral person conducts discussions among the disputing parties designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.

(i) AMini-Trial®, as set forth in sections 15 and 23 herein, is a settlement process in which each side presents an abbreviated summary of its case to the parties or representatives of the parties who are authorized to settle the case. A neutral person may preside over the proceeding. Following the presentation, the parties or their representatives seek a negotiated settlement of the dispute.

(j) “Neutral” is an impartial person who presides over alternative dispute resolution proceedings as defined in this Rule.

(k) A Non-Binding Arbitration[®] is a process in which a neutral person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which is non-binding as set forth in sections 14 and 21 herein.

(l) A Order of Reference[®] is an order of a court entered in an eligible civil action in accordance with Section 3 (Initiation) directing the parties to participate in a Rule 31 ADR Proceeding.

(m) A Rule 31 ADR Proceedings[®] are proceedings which take place in accordance with an Order of Reference and include A Case Evaluations,[®] A Mediations,[®] A Judicial Settlement Conferences,[®] A Non-Binding Arbitrations,[®] A Summary Jury Trials,[®] “Mini-Trials” or other proceedings as contemplated by an Order of Reference entered in accordance with this Rule.

(n) A Rule 31 Mediator[®] is any person listed by the ADRC as a mediator pursuant to section 17 herein.

(o) A Rule 31 Neutral[®] is any person who acts as a Neutral in a Mediation, Case Evaluation, Mini-Trial, Non-Binding Arbitration, Summary Jury Trial, or any other proceeding as contemplated by an Order of Reference entered in accordance with this Rule. Rule 31 Neutrals, other than Rule 31 Mediators, are required to be licensed attorneys.

(p) A Summary Jury Trial[®] as set forth in section 24 herein, is an abbreviated trial with a jury in which litigants present their evidence in an expedited fashion. The litigants and

the jury are guided by a presiding neutral person. After an advisory verdict from the jury, the presiding neutral person may assist the litigants in a negotiated settlement of their controversy.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31 PROCEEDINGS

Section 3. Initiation/Order of Reference

(a) Rule 31 ADR Proceedings will be initiated by the entry of an Order of Reference.

(b) Upon motion of either party, or upon its own motion, a Court, by Order of Reference, may order the parties to an Eligible Civil Action to participate in a Judicial Settlement Conference, Mediation, or Case Evaluation. Alternatively, a court may adopt a local rule by which all cases of a particular type or description are referred to Judicial Settlement Conference, Mediation, or Case Evaluation.

(c) Any Order of Reference made sua sponte and any referral to Judicial Settlement Conference, Mediation or Case Evaluation made by local rule, shall be subject to review on motion by any party and shall be vacated should the Court determine in its sound discretion that the referred case is not appropriate for ADR or is not likely to benefit from submission to ADR. Pending disposition of any such motion, the ADR proceeding shall be stayed without the need for a court order.

(d) Upon motion of a party, or upon its own motion, and with the consent of all parties, a Court, by Order of Reference, may order the parties to participate in Non-Binding Arbitration, Mini-Trial, Summary Jury Trial, or other appropriate alternative dispute resolution proceedings.

(e) The Order of Reference shall direct that all Rule 31 ADR Proceedings be concluded as efficiently and expeditiously as possible given the circumstances of the case.

Section 4. Selection of Neutrals

(a) Within 15 days of the date of an Order of Reference or the effective date of a local rule directing participation in a Rule 31 ADR Proceeding, other than a Judicial Settlement Conference, the parties must notify the Court of the Rule 31 Neutral or Rule 31 Neutrals agreed to by the parties or of their inability to agree on a Rule 31 Neutral or Rule 31 Neutrals.

(b) In the event the parties cannot agree on the selection of a neutral or neutrals, the Court shall nominate a neutral or neutrals in accordance with the following procedure:

(1) In the case of Mediations, Mini-trials, Non-Binding Arbitrations, Case Evaluations and any other appropriate alternative dispute resolution proceeding in which a single Rule 31 Neutral will serve, the Court shall designate three Rule 31 Neutrals from the appropriate list or having the appropriate qualifications as set forth in Sections 14 – 18, and one additional Rule 31 Neutral for each additional party over two.

(2) In the matter of a Case Evaluation or Non-Binding Arbitration before a panel of three or more Rule 31 Neutrals, the Court shall designate, at random, three Rule 31 Neutrals, meeting the qualifications noted in Sections 14 or 16, for each spot on the panel and one additional Rule 31 Neutral for each spot on the panel for each additional party over two.

(3) After receiving the Court's nomination, each party shall strike one name for each Neutral being selected from the Court's nominations. Then, the Court shall appoint the remaining Rule 31 Neutral or Neutrals unless a valid and timely objection is made and upheld. In the event the designated Rule 31 Neutral cannot serve, the process, to the extent necessary, will be repeated.

(4) The Court's nomination of Rule 31 Neutrals shall be random unless the matter requires particular expertise not possessed by all Rule 31 Neutrals.

(c) The clerks for each judicial district shall maintain and make available to the public, upon request, a list of Rule 31 Mediators listed by the ADRC, the date of their approval, and their qualifications and experience.

Section 5. Reports

(a) The Order of Reference shall require the Rule 31 Neutral to file a final report pursuant to Rule 5.06, Tenn. R. Civ. P. with the Court at the conclusion of the Rule 31 ADR Proceeding. The final report shall indicate (i) which parties appeared and participated in the Rule 31 ADR Proceeding; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's services be charged as court costs. The report shall be filed within the time specified by the Court in the Order of Reference. In the event the Order of Reference does not specify a deadline, the final report shall be filed within 60 days of the initial meeting with the parties pursuant to the Rule 31 ADR Proceeding.

(b) Unless otherwise directed by the Order of Reference, the Rule 31 Neutral shall file status reports with the Court every 30 days until the Rule 31 ADR Proceeding is concluded.

Section 6. Participation of Attorneys

Attorneys may appear with clients during alternative dispute resolution proceedings.

Section 7. Inadmissible Evidence

Evidence of conduct or statements made in the course of Rule 31 ADR Proceedings and other proceedings conducted pursuant to an Order of Reference or local rule shall

be inadmissible to the same extent as conduct or statements are inadmissible under Tennessee Rule of Evidence 408.

Section 8. Costs

The costs of any Rule 31 ADR Proceeding, including the costs of the services of a Rule 31 Neutral may, at the Rule 31 Neutral-s request, be charged as court costs. The request to charge the costs of the services of the Rule 31 Neutral(s) should be submitted to the Court as set forth in Section 5 of this Rule. If an appeal of the case is filed, the parties shall advise the Court in their appellate briefs whether the Rule 31 Neutral(s) requested the cost of the Rule 31 Neutral-s services be included in the court costs.

The Court may, in its sound discretion, waive or reduce costs of a Rule 31 ADR Proceeding.

GENERAL PROVISIONS APPLICABLE TO ALL NEUTRALS

Section 9. Standards of Professional Conduct for Rule 31 Neutrals

- (a) Rule 31 Neutrals shall avoid the appearance of impropriety.
- (b) Rule 31 Neutrals shall comply with all rules and procedures promulgated by the Tennessee Supreme Court regarding qualifications, compensation, and participation in Rule 31 ADR Proceedings, including but not limited to the Standards of Professional Conduct for Rule 31 Neutrals attached as Appendix A hereto. A violation of any of these rules and procedures by any attorney Rule 31 Dispute Resolution Neutral shall constitute a violation of the Rules of Professional Conduct.
- (c) The Standards of Professional Conduct attached as Appendix A for Rule 31 Neutrals are incorporated into this Rule.

Section 10. Obligations of Rule 31 Neutrals

(a) Before the commencement of any Rule 31 ADR Proceeding, Rule 31 Neutrals shall:

(1) Make a full and written disclosure of any known relationships with the parties or their counsel of the proceedings that may affect or give an appearance of affecting the Neutral's neutrality.

(2) Advise the parties regarding the Rule 31 Neutral's qualifications and experience.

(3) Discuss with the parties, the rules and procedures which will be followed in the proceeding.

(b) During Rule 31 ADR Proceedings, Rule 31 Neutrals shall:

(1) Advise the court before which the proceeding is pending if the ADR proceeding is, or is likely to become, inappropriate, unfair, or detrimental in the referred action.

(2) Maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias in favor of or against any party, issue, or cause.

(3) Refrain from giving legal advice to the parties to the Rule 31 ADR Proceeding in which the Neutral is participating. However, while a Rule 31 Neutral should not offer a firm opinion as to how the court in which a case has been filed will resolve the case, a Rule 31 Neutral may point out possible outcomes of the case and may indicate a personal view of the persuasiveness of a particular claim or defense. Moreover, neither an *Aevaluation*[@] pursuant to a Case Evaluation nor an *Aaward*[@] pursuant to a Non-Binding Arbitration, nor an *Aadvisory verdict*[@] pursuant to a Summary Jury Trial will be considered to be *Alegal advice*[@] for purposes of this Rule.

(c) During and following Rule 31 ADR Proceedings, Rule 31 Neutrals shall:

(1) Refrain from participation as attorney, advisor, judge, guardian ad litem, master or in any other judicial or quasi-judicial capacity in the matter in which the Rule 31 ADR Proceeding was conducted.

(2) Provide a timely report as required under section 5 of this Rule.

(3) Avoid any appearance of impropriety in the Neutral's relationship with any member of the judiciary or the judiciary's staff with regard to the Rule 31 ADR Proceedings or the results of Rule 31 ADR Proceedings.

(d) Preserve and maintain the confidentiality of all information obtained during Rule 31 ADR Proceedings and shall not divulge information obtained by them during the course of Rule 31 ADR Proceedings without the consent of the parties, except as otherwise may be required by law.

Section 11. Proceedings for Discipline of Rule 31 Mediators

(a) Any grievances against a Rule 31 Mediator who is not an attorney regarding the failure of the Rule 31 Mediator to comply with the provisions of this Rule or any standard promulgated under this Rule shall be filed with the ADRC.

(b) Grievances against a Rule 31 Mediator who is an attorney regarding the failure of the Rule 31 Mediator to comply with the provisions of Rule 31 or any standard promulgated under Rule 31 shall be filed with the Board of Professional Responsibility and determined in accordance with procedures adopted by that board.

(c) Any grievance against a non-attorney Rule 31 Mediator will be heard in the first instance by a Grievance Committee of three Commissioners, appointed by the Chair and, where possible, from the Grand Division in which the alleged act, or failure to act, giving rise to the grievance took place.

(d) The Grievance Committee will hear and determine the grievance and provide a written ruling stating whether there is cause for the grievance. If the Grievance Committee finds that there is cause for the grievance, it shall impose an appropriate sanction upon the Rule 31 Mediator, including private admonishment, public reprimand, suspension, or disqualification.

(e) A party who wishes to obtain a review of the decision of the Grievance Committee may appeal to the full ADRC by filing a written notice of appeal with the ADRC, through the AOC Programs Manager, within 30 days following the Grievance Committee's decision.

(f) The ADRC will then hear the grievance *de novo* sitting without those members who served on the original Grievance Committee.

(g) The ADRC will hear and determine the grievance and provide a written ruling stating whether there is cause for the grievance. If the ADRC finds that there is cause for the grievance, it shall impose an appropriate sanction upon the Rule 31 Mediator, including private admonishment, public reprimand, suspension, or disqualification. The decision of the ADRC is final.

Section 12. Immunity

Activity of Rule 31 Neutrals in the course of Rule 31 ADR proceedings shall be deemed the performance of a judicial function and for such acts Rule 31 Neutrals shall be entitled to judicial immunity.

Section 13. Compensation

Rule 31 Dispute Resolution Neutrals are entitled to be compensated at a reasonable rate for participation in court-ordered alternative dispute resolution proceedings, except pro bono proceedings pursuant to Section 18 of this Rule.

PROVISIONS REQUIRED REGARDING QUALIFICATIONS AND TRAINING OF NEUTRALS

Section 14. Rule 31 Neutrals in Rule 31 Non-Binding Arbitration

(a) The Parties may select any lawyer in good standing to act as an arbitrator in a non-binding arbitration.

(b) Where the Court, pursuant to Section 4, appoints a Rule 31 Neutral to act as an arbitrator in a general civil case, the person appointed shall be a lawyer in good standing and admitted to practice in Tennessee for at least ten years.

(c) Where the Court, pursuant to Section 4, appoints a Rule 31 Neutral to act as an arbitrator in a family case, the person appointed shall be a lawyer in good standing and admitted to practice in Tennessee for at least ten years, during which time a substantial portion of the lawyer's practice shall be family cases.

Section 15. Rule 31 Neutrals Presiding in Mini-Trials

(a) The Parties may select any lawyer in good standing and admitted to practice in Tennessee to act as a Neutral in a Mini-Trial.

(b) Where the Court, pursuant to Section 4, appoints a Rule 31 Neutral to act in a Mini-Trial in a general civil case, the person appointed shall be a lawyer in good standing and admitted to practice in Tennessee for at least ten years.

(c) Where the Court, pursuant to Section 4, appoints a Rule 31 Neutral to serve in a Mini-Trial in a family case, the person appointed shall be a lawyer in good standing, admitted to practice in Tennessee for at least ten years, during which a substantial portion of the lawyer-s practice shall be in family cases.

Section 16. Rule 31 Case Evaluators

(a) The parties may select any lawyer in good standing to act as an evaluator in general civil or family cases.

(b) Where the Court, pursuant to Section 4, appoints a Rule 31 Neutral to act as an evaluator in a general civil case, the person appointed shall be a lawyer in good standing, admitted to practice in Tennessee for at least ten years.

(c) Where the Court, pursuant to Section 4, appoints a Rule 31 Neutral to act as an evaluator in a family case, the person appointed shall be a lawyer in good standing, admitted to practice in Tennessee for at least ten years, during which a substantial portion of the lawyer-s practice shall be in family cases.

Section 17. Rule 31 Mediators

No person shall act as a Rule 31 Mediator without first being listed by the ADRC. To be listed, Rule 31 Mediators must pay application fees set by the ADRC and must comply with the qualifications and training requirements set forth in this section. All training must have been approved by the ADRC as set forth in section (h) below and must have been completed within the ten years immediately preceding the application seeking Rule 31 Mediator listing.

(a) Rule 31 Mediators in General Civil Cases

(1) To be listed by the ADRC as a Rule 31 Mediator in general civil cases, one must:

(A) be of good moral character and certify in writing an intention to comply with the conditions and obligations imposed by Rule 31, including those requirements related to pro bono obligations;

(B) have a graduate degree plus four years of practical work experience, or a baccalaureate degree plus six years of practical work experience; and

(C) complete 40 hours of general mediation training which includes the curriculum components specified by the ADRC for Rule 31 Mediators in general civil cases.

(2) If the applicant's profession requires licensing, the applicant shall also:

(A) be in good standing with the Board or Agency charged with issuing licenses to practice in the applicant's profession, if any. The failure to take or pass an examination required by the Board or Agency will not affect the applicant's standing to apply for certification as a Rule 31 Mediator. A disbarred lawyer or any other professional with a suspended or revoked license may reapply when the applicant has been readmitted to practice.

(B) not be the subject of three or more open complaints made to the Board or Agency charged with hearing complaints about the applicant's professional conduct. If there are three or more open complaints with the relevant Board or Agency the application will be deferred by the ADRC until the applicant has advised the ADRC that three or more open complaints no longer exist.

(b) Rule 31 Mediators in Family Cases

(1) To be listed as a Rule 31 Mediator in family cases, one must:

(A) comply with the requirements set forth in Section 17(a)(1)(A) and 17(a)(2)(A) and 17(a)(2)(B) above; and

(B) be a Certified Public Accountant, have a graduate degree, or have a baccalaureate degree with ten years practical experience in family mediation;

(C) have four years of practical work experience in psychiatry, psychology, counseling, social work, education, law, or accounting;

(D) complete 40 hours of training in family mediation which includes the curriculum components specified by the ADRC for Rule 31 Mediators in family cases and which also includes four hours of training in screening for and dealing with domestic violence in the mediation context; and

(E) complete six additional hours of training in Tennessee family law and court procedure. It is provided, however, that the ADRC may waive this requirement for lawyers who have completed at least six hours of training devoted to Tennessee family law and/or procedure approved by the ADRC on Continuing Legal Education within the three-year period immediately prior to the completion of the requirements of Section 17(c)(3)(A) through (I).

(c) Content of Training Programs for Rule 31 Mediators

(1) Before being listed either as Rule 31 General Civil Mediators or as Rule 31 Family Mediators, applicants shall complete a course of training consisting of not less than 40 hours, including the following subjects:

- (A) Rule 31 and procedures and standards adopted thereunder;
- (B) conflict resolution concepts;
- (C) negotiation dynamics;

- (D) court process;
 - (E) mediation process and techniques;
 - (F) communication skills;
 - (G) standards of conduct and ethics for Rule 31 Neutrals;
 - (H) community resources and referral process;
 - (I) cultural and personal background factors;
 - (J) attorneys and mediation; and
 - (K) the unrepresented party and mediation.
- (2) The 40 hours of instruction for Rule 31 General Civil Case Mediators will also include:
- (A) state rules, state statutes, and local procedures and forms affecting civil mediation;
 - (B) appropriate techniques for mediating with multiple parties;
 - (C) appropriate techniques for handling situations where individual(s) present do not have authority to settle; and
 - (D) observation and role playing of trainees in general civil mediations.
- (3) The 40 hours of instruction for Rule 31 Family Mediators will also include:
- (A) state rules, state statutes and local procedures and forms governing family mediation;
 - (B) special ethical dilemmas arising in the family mediation context;
 - (C) the constraints attending the mediation of cases where a threat of domestic violence exists;
 - (D) confidentiality as it relates to child abuse and spouse abuse;

(E) the use of protective services, as in cases of child abuse, domestic violence, or elder abuse, and maintaining a list of these services;

(F) psychological issues in separation, divorce and family dynamics;

(G) issues concerning the needs of children in the context of divorce;

(H) family economics; and

(I) observation and role playing of trainees in family mediations.

(d) Waiver of Training Requirements for Certain Rule 31 Mediators

(1) Upon petition to and acceptance by the ADRC, the following persons may be qualified as Rule 31 Mediators without first complying with the qualification and training requirements set forth in Section 17(a), (b) or (c): (i) graduates of accredited law schools who have passed a law school mediation course which awards at least three semester hours credit and which includes the curriculum components set forth in this Rule or their substantial equivalent as determined by the ADRC and who have four years of practical work experience; (ii) trained mediators who substantially comply with the qualifications set forth for Rule 31 Mediators in general civil cases or Rule 31 Mediators in family cases as may be determined by the ADRC with the assistance of the AOC Programs Manager, provided that their training be the substantial equivalent of that required under this Rule and that the training has been completed within ten years prior to the application.

(2) Applicants for Rule 31 Mediator under this subsection will be assessed an additional application fee for this review of their applications by the ADRC.

(e) Procedure for Cross-Listing Rule 31 Mediators

The ADRC may cross-list an individual listed as a Family Mediator, or listed as a General Civil Mediator, if that individual has met the requirements of Section 17(a), (b) or (c) and has obtained such additional training in general civil or family mediation as in the judgment and discretion of the ADRC qualifies that individual to be also listed as a General Civil or Family Mediator.

(f) Trainer Procedure for Obtaining Curriculum Approval

Prior to offering their courses for initial listing training, or training to be listed as a Rule 31 Family Mediator with the designation of “specially trained in domestic violence,” all trainers are required to obtain ADRC approval of their curricula. The trainers shall apply to the ADRC for curricula approval on forms approved by the ADRC.

(g) Procedure for Rule 31 Family Mediator Additional Designation as ASpecially Trained in Domestic Violence@

To obtain a designation as ASpecially Trained in Domestic Violence,@ the Rule 31 listed Family Mediator must have completed a twelve-hour course on domestic violence issues approved by the Training Committee of the ADRC and provide to the ADRC proof of attendance to the approved course. The Rule 31 listed Family Mediator may request a waiver of course attendance based upon training and/or experience determined by the ADRC to be substantially equivalent to the course approved by the Training Committee.

(h) A sitting judge whose retirement or resignation is pending may apply to be listed as a Rule 31 Mediator. For purposes of this Rule, a sitting judge includes a part-time, full-time, or senior judge. Upon the ADRC’s determination that the judge-applicant meets the qualifications and training requirements set forth in this Rule, the Commission shall

notify the judge-applicant in writing that the requirements for being listed have been met. The Commission shall not list the judge-applicant as a Rule 31 Mediator until the effective date of the judge-applicant's retirement or resignation, at which time the judge-applicant may request in writing to be listed by the Commission as a Rule 31 Mediator. The Commission shall then place the judge-applicant on the list of Rule 31 Mediators. This provision does not affect the status of any judge who has been granted inactive status as a Rule 31 Mediator prior to the adoption of this provision.

Section 18. Additional Obligations of Rule 31 Mediators

Rule 31 Mediators must maintain a current address with the Programs Manager of the Administrative Office of the Courts. Any change of address must be provided within thirty days of such change.

To remain listed by the ADRC, Rule 31 Mediators shall comply with continuing mediation education and annual registration requirements, as follows:

(a) Continuing Education

(1) Courses approved for continuing education under this Rule include but are not limited to, courses approved by the Continuing Legal Education Commission, programs approved by professional licensing agencies, programs provided by not-for-profit community mediation centers and not-for-profit mediation associations.

(2) Rule 31 Mediators must complete six hours continuing mediation education every two years.

(A) General Civil Mediators – The six hours shall consist of:

(i) Three hours in mediation continuing education of which at least one hour shall be related to ethics, and

(ii) Three hours general continuing education.

(B) Family Mediators – The six hours shall consist of:

(i) Three hours in mediation continuing education of which at least one hour shall be related to ethics, and

(ii) Three hours continuing education related to psychiatry, psychology, counseling, social work, education, family law, or accounting.

(C) For dually listed Rule 31 Mediators who were initially listed in the same year, meeting the Rule 31 Family Mediator Listing continuing education requirements will also meet the Rule 31 General Civil Mediator listing requirements.

(3) Attorney Rule 31 Mediators are not exempt from the continuing mediation education requirements of Rule 31 Section 18(a) as a result of the age exemption for continuing legal education pursuant to Supreme Court Rule 21, Section 2.04(a).

(b) Annual Renewal of Rule 31 Mediator Status

~~As~~ As a condition of continued listing, each Rule 31 Mediator must file an annual report with the AOC Programs Manager attesting that he/she is in good standing with any professional licensing agency or organization, if applicable, along with the annual registration fee set by the ADRC.

(c) Inactive Status

(1) Any Rule 31 Mediator who is prohibited by reason of employment from practicing mediation during such employment may apply to the ADRC for inactive status. If approved by the ADRC, such Rule 31 Mediator shall be placed on inactive status during

such employment. While on inactive status, the Rule 31 Mediator will not be required to pay the annual fee but must comply with the continuing education requirements.

(2) Any Rule 31 Mediator requesting inactive status or failing to complete the Rule 31 Mediator-s annual renewal will be placed on inactive status.

(3) The Rule 31 Mediator may apply to the ADRC for reactivation. To be approved for reactivation, the Rule 31 Mediator must complete all the continuing mediation education required by Rule 31 during the period of inactive status and must pay the renewal fee for the year in which the Rule 31 Mediator reactivates. The Programs Manager will review the request, determine if requirements have been met and, if met, place the Rule 31 Mediator on active status. Failure to be so reactivated may be appealed to the ADRC.

(d) Pro Bono Service

As a condition of continued listing, each Rule 31 Mediator must be available to conduct three pro bono mediations per year, not to exceed 20 total hours. At such time as an Order of Reference to Mediation is made, or in the case of a local rule becoming effective, the court may, upon a showing by one or more parties of an inability to pay, direct that the Rule 31 Mediator serve without pay. No Rule 31 Mediator will be required to conduct more than three pro bono proceedings or serve pro bono for more than 20 hours in any continuous 12-month period.

(e) Reports Required of Rule 31 Mediators

In addition to compliance with Section 5 of this Rule, Rule 31 Mediators shall be required to submit to the ADRC reports of any data requested by the ADRC consistent with the requirements of Section 19(a)(8) as to any mediation conducted by a Rule 31

Mediator, including those mediations which are not subject to Rule 31. The report forms will be available on the AOC website and from the AOC.

(f) Procedure Upon Revocation or Suspension

(1) All listed Rule 31 Mediators subject to the provisions of this Rule, upon being subjected to revocation or suspension with any professional licensing agency or organization, within or outside the State of Tennessee, shall promptly inform the ADRC of such action in the manner prescribed herein.

(2) The listed Rule 31 Mediator shall, within 14 days of receipt of being advised of such revocation or suspension by the professional licensing agency or organization, provide notification of such action to the ADRC. Notification to the ADRC by the listed Rule 31 Mediator being subjected to revocation or suspension shall include a copy of any order or directive by the professional licensing agency or organization setting forth the nature and duration of such revocation or suspension.

(3) In the event the discipline imposed by the professional licensing agency or organization has been stayed, any discipline imposed by the ADRC shall be deferred until such stay expires.

(4) Thirty days after notification as herein above detailed the ADRC shall impose identical discipline unless the listed Rule 31 Mediator appeals to the ADRC the imposition of such discipline. The ADRC shall impose identical discipline unless it finds upon the face of the record upon which the discipline is predicated it clearly appears:

(A) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the ADRC could not, consistent with its duty, accept as final the conclusion on that subject; or

(C) That the misconduct established warrants substantially different discipline.

Where the ADRC determines that any of said elements exist, this ADRC shall enter such other order as it deems appropriate.

(5) In all other respects, a final adjudication by the professional licensing agency or organization that the listed Rule 31 Mediator has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding by the ADRC.

(6) A certified order of removal by the professional licensing agency or organization of revocation or suspension of the formerly listed Rule 31 Mediator shall constitute clear and convincing evidence of the same. Upon the removal of such revocation or suspension, an individual formerly listed as a Rule 31 Mediator under this Rule shall be entitled to apply to the Credentials Committee of the ADRC for listing, under the applicable criteria for the same as then detailed in this Rule.

PROVISIONS FOR ADMINISTRATION OF THE RULE

Section 19. Alternative Dispute Resolution Commission

(a) The ADRC shall be appointed by the Supreme Court which shall name one of the ADRC's members as the Chair. The ADRC shall have the responsibility for:

- (1) Reviewing and revising, if appropriate, the standards for listing Rule 31 Mediators;
- (2) Determining the procedure for listing Rule 31 Mediators;

- (3) Preparing and disseminating appropriate publications containing details regarding Rule 31 ADR Proceedings;
 - (4) Reviewing and revising, as and when appropriate, the standards of professional conduct that shall be required of Rule 31 Neutrals;
 - (5) Reviewing the content of training programs to determine whether they meet the standards for qualification under Rule 31;
 - (6) Assuring that all listed Rule 31 Mediators have participated in approved training, have complied with qualification requirements, and have certified their agreement to follow the guidelines and applicable standards and their understanding of the sanctions for failure to comply;
 - (7) Reviewing and, where appropriate, approving applications for listing of Rule 31 Mediators;
 - (8) Evaluating the success of Rule 31 ADR Proceedings based on participant satisfaction, quality of results, and effect on case management;
 - (9) Evaluating and reviewing each listed Rule 31 Mediator for continued compliance with the established standards;
 - (10) Suggesting rules and revisions in rules regarding alternative dispute resolution proceedings; and
 - (11) Setting and collecting appropriate training and registration fees.
- (b) The day-to-day work of the ADRC shall be conducted by the Programs Manager of the Administrative Office of the Courts who shall be responsible for:
- (1) Processing applications for inclusion on lists of Rule 31 Mediators in accordance with procedures recommended by the ADRC and approved by the Supreme Court;

- (2) Processing annual reports from Rule 31 Mediators and approving their continued qualification for Rule 31 listing;
- (3) Taking such steps as may be necessary to provide lists of Rule 31 Mediators to the appropriate clerks of court;
- (4) Coordinating, approving, or providing training to Rule 31 Mediators;
- (5) Processing grievances against Rule 31 non-attorney Mediators;
- (6) Coordinating the work of and assisting the ADRC;
- (7) Assisting in the evaluation of Rule 31 alternative dispute resolution programs; and
- (8) Taking such other steps in conjunction with the Supreme Court and the ADRC as may be reasonably necessary to establish, maintain and improve the court-annexed dispute resolution program in Tennessee.

PROVISIONS RELATIVE TO PARTICULAR RULE 31 ADR PROCEEDINGS OTHER THAN MEDIATION

Section 20. Judicial Settlement Conferences

Trial Court Judges are authorized to conduct Judicial Settlement Conferences in accordance with procedures to be developed by local rule, or in consultation with the parties. Without the consent of the parties, no judge presiding over a matter may preside over a Judicial Settlement Conference respecting that matter.

Section 21. Non-Binding Arbitration

Trial Court Judges are authorized to conduct Non-Binding Arbitration in accordance with procedures to be developed by local rule and with the consent of the parties.

Attached as Appendix B is a template form of order for consideration and possible use by parties and courts in fashioning their own order for Non-Binding Arbitration. Neutrals

serving in Non-Binding Arbitrations will be subject to Appendix A, Standards of Conduct for Rule 31 Neutrals.

Section 22. Case Evaluation

Trial Court Judges are authorized to direct the parties to participate in Case Evaluations in accordance with procedures to be developed by local rule and with the consent of the parties. Attached as Appendix C is a template form of order for consideration and possible use by trial judges in fashioning orders directing participation in Case Evaluations. Neutrals serving in Case Evaluations will be subject to Appendix A, Standards of Conduct for Rule 31 Neutrals.

Section 23. Mini-Trial

Mini-Trials may be ordered only with the consent of the parties. It is intended that this ADR process be flexible so that counsel, in consultation with the court, design a procedure which is suited for the Eligible Civil Action. Attached as Appendix D is a template form of order for consideration and possible use by the parties in fashioning an order for a Mini-Trial. Neutrals serving in Mini-Trials will be subject to Appendix A, Standards of Conduct for Rule 31 Neutrals.

Section 24. Summary Jury Trial

Summary Jury Trials may be ordered only with the consent of the parties. It is intended that this ADR process be flexible so that counsel, in consultation with the court, design a procedure which is suited for the Eligible Civil Action. Attached as Appendix E is a template form of order for consideration and use by the parties and trial judges in fashioning an order for Summary Jury Trial.

**[APPENDICES A-E REMAIN UNCHANGED AND PART OF PROPOSED AMENDED
RULE 31]**